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NOTIFICATION

No.H.12017/214/2010-LJD, the 26<sup>th</sup> October, 2010. The following Act is hereby published for general information.

The Mizoram Shops and Establishments Act, 2010 (Act No. 14 of 2010)

(Received the assent of the Governor of Mizoram on 13.10.2010.)

AN  
ACT, 2010  
[Act no. 14 of 2010]

To provide for the regulation of employment and conditions of service in shops and establishments, and for matters connected therewith, in the State of Mizoram.

It is enacted by the Legislative Assembly of Mizoram in the sixty first year of the Republic of India as follows :-

CHAPTER - I  
PRELIMINARY

Short title, extent &  
commencement

- 1 (1) This Act may be called the Mizoram Shops and Establishments Act, 2010
- (2) It extends to the whole of Mizoram.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas.

Definition

2. In this Act unless the context otherwise requires :-
- (1) "adult" means a person who has completed his eighteenth year of age.
- (2) "apprentice" means a person who is employed on payment of wages or otherwise for the purpose of being trained in any trade, craft or calling.
- (3) "Child" means a person, who has not completed fourteen years.
- (4) "closed" means not open for the service of any customer or not open for any business connected with an establishment involving work by an employee;
- (5) "commercial establishment" means any establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and includes :-
- (a) a society registered under the Societies Registration Act, 1860 and a charitable or other trust, whether registered or not, which carries on any business, trade or profession or any work in connection with or incidental or ancillary to any business, trade or profession.
- (b) an establishment which carries on the business of advertising or commission agency or forwarding and commercial agency or which is a clerical department of a factory or of any industrial or commercial undertaking including one of a public transport;

(c) an insurance company, a joint stock company or bank or broker's office and an exchange; and

(d) any other establishment which the State Government may, by notification, declare to be a commercial establishment for the purpose of this Act; but does not include a shop or a factory registered under the Factories Act, 1948; or a residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment in respect of which the Factories Act, 1948 or the Plantation Labour Act, 1948 or the Mines Act, 1952 or the Cinematograph Act 1952 is applicable.

(6) "day" means a period of twenty four hours beginning at midnight;

Provided that in the case of an employee whose hours of work extend beyond midnight, "day" means the period of twenty-four hours beginning from the time when such employment commences irrespective of midnight.

(7) "employee" means a person wholly or periodically employed, whether directly or otherwise, in or in connection with any establishment and includes an apprentice, any clerical or other member of the staff of a factory or industrial establishment which falls outside the scope of the Factories Act, 1948, but does not include a member of the employer's family, and "employed" shall be construed accordingly;

(8) "employer" means a person owning or having charge of, or ultimate control over, the affairs of an establishment and includes members of the family of an employer, a manager, agent or other person acting on behalf of such person, manager or agent in the general management, supervision or control of such establishment;

(9) "establishment" means a shop, commercial establishment, a restaurant, residential hotel, eating house, cafe or an establishment for public entertainment or amusement and includes such establishment as the State Government may, by notification, declare to be an establishment for the purpose of this Act;

(10) "factory" means any premises which is a factory within the meaning of the Factories Act, 1948;

(11) "family" in relation to an employer means the husband, or wife, son, daughter, father, mother, brother or sister, grandson or grand daughter of the employer who lives with and is wholly dependent on such employer,

(12) "government" means Government of Mizoram;

(13) "Inspector" means an Inspector appointed under this Act,

(14) "notification" means a notification published in the Mizoram Gazette;

(15) "period of work" means the time during which an employee is at the disposal of the employer;

(16) "holiday" means a day on which an establishment shall remain closed or on which an employee shall be given a holiday under the provisions of this Act;

(17) "leave" means leave as provided for in this Act;

(18) "prescribed" means prescribed by rules made under this Act.

(19) "prescribed authority" means an officer appointed to be prescribed authority under this Act.

(20) "registration certificate" means a certificate showing the registration of establishment covered under this Act;

(21) "residential hotel" means any premises in which business is carried on for the supply of dwelling accommodation and meals on payment of a sum of money by a traveller or any other person or class of persons and include a club;

(22) "restaurant" or "eating house" means any premises in which the business is carried on wholly or periodically of the supply of meals or refreshments to the public or class of public for consumption on the premises of the restaurants but does not include a restaurant attached to a theatre or a restaurant or a canteen attached to a factory if the persons employed there in are allowed the benefits provided to workers under the Factories Act, 1948;

- (23) "shop" means any premise used wholly or in part for the sale of goods or where any trade or business is carried on or where services are rendered to customers and includes offices, store rooms, godowns or warehouses, whether in the same premises or otherwise used in connection with such trade, business and workshops including automobile garages, accountant establishments, drawing and designing firms, solicitor's establishments and such establishment as the State Government may, after taking into consideration the nature of work carried on there, by notification, declare to be shops for the purpose of this Act.
- (24) "spread over" means the period between the commencement and the termination of work of an employee on any day.
- (25) "wages" means wages as defined in the Minimum Wages Act, 1948.
- (26) "week" means a period of seven days beginning at midnight on Saturday.
- (27) "young person" means a person who has completed fourteen years but has not completed eighteenth year of age.

Exemption

- 3 (1) This Act shall not apply to :-
  - (a) offices of, or under, the Central Government or State Government, local authorities except a commercial undertaking;
  - (b) any Government owned transport service or any system of public conservancy or sanitation, any industry or business or undertaking which supply water or light to the public;
  - (c) establishment for the treatment or care of the sick, the infirm, destitute or mentally unfit;
  - (d) shops or stalls in any public fair or bazaar held for charitable purposes;
  - (e) stalls or refreshment rooms at railway stations or airports;
  - (f) shops or stalls in any public exhibition so far as such shops or stalls dealing in retail trade which is solely, subsidiary or ancillary to the main purpose of such exhibition or show.

- (g) shops or stalls dealing mainly in vegetables, meat and fish.
- (h) establishments in mines and oilfields.
- (i) persons employed in any establishment in a managerial capacity and
- (j) such establishment or persons or such classes of any of them as the State Government may, by notification, exempt from the operation of all or any of the provisions of this Act.
- (k) persons whose work is intermittent or seasonal or temporarily engaged in preparatory or supplementary work for a short duration not exceeding two months.

(2) The provisions of section 12 and section 13 of this Act shall not apply to:

- (a) shops dealing mainly in dairy product, bread, pastries, sweetmeat and flowers.
- (b) shops dealing mainly in articles required for funerals, burials or cremations as may be specified by the inspector within their respective jurisdictions.
- (c) shops dealing mainly in tobacco, cigars, cigarettes, cheroots, bidis, pan, ice cream, liquid refreshment sold in retail for consumption on the premises, ice, news papers or periodicals so far as the sales of these articles are concerned.
- (d) shops dealing in medicines or medical or surgical requisites or appliances.
- (e) establishment for retail sale of petrol.
- (f) shops dealing in newspapers or periodicals, editing sections of news papers' offices and offices of news agencies.

## CHAPTER - II

### REGISTRATION OF ESTABLISHMENTS

Appointment of  
Registering Officer

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The State Government may, by order notified in the Official Gazette -

- (a) appoint such persons, being Gazetted Officers of the State Government, as it thinks fit to be the registering officers for the purpose of this Act; and
- (b) define the area within which a registering officer shall exercise the power conferred on him under this Act.

Registration of Establishment

Section 5

- (1) Every employer shall :-
  - (a) in relation to an establishment to which this Act applies on its commencement, within a period of sixty days from such commencement and
  - (b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act becomes applicable to such establishment, make and application to the Registering Officer for the registration of such establishment;

Provided that registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

- (2) Every application under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.
- (3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time as may be prescribed.
- (4) Every employer shall display the registration certificate issued under the Act in a conspicuous place in the establishment.
- (5) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other particulars prescribed for such establishment, such changes shall be intimated by the employer to the registering officer within thirty days of such change.
- (6) The registration certificate issued under sub-section (3) shall be valid for a period of one year from the date on which it was issued or renewed and the employer to whom such certificate is issued may, within thirty days immediately before the expiry of the validity of such certificate, apply to the Registering Officer in such form accompanied by such fees as may be prescribed. Registering Officer shall, on receipt of the application and the requisite fees, renew the registration for a further period of one year at a time.

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Cancellation of Registration.

6 If the registering officer is satisfied that for any reason the registration of an establishment has become useless or ineffective and, therefore, requires to be revoked, he may, after giving and opportunity to the employer of the establishment to be heard, cancel the registration.

Effect of non-registration

7 No employer of an establishment, to which this Act applies, shall-  
(1) in case of an establishment required to be registered under section 5, but which has not been registered under that section;  
(2) in case of an establishment the registration in respect of which has been cancelled under section 6; employ an employee in the establishment.

CHAPTER - III  
HOURS OF WORK

Daily and weekly hours of work.

8 (1) No employee in any establishment, to which the provisions of this Act have been applied shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week.

Provided that the total hours of work including overtime shall not exceed ten hours in any day except on days of stock-taking and preparation of accounts;

Provided further that the total hours of overtime work shall not exceed fifty hours in three consecutive months.

(2) No young person shall be required or permitted to work in any establishment for more than five hours in any day -

Extra wages for overtime work.

9 Where an employee works in any establishment for more than eight hours in any day or for more than forty-eight hours in any week, any employee shall in respect of such overtime work, be entitled to wages at the rate of twice the rate of normal wages.

Interval for rest

10 (1) The period of work of an adult employee in an establishment each day shall be so fixed that no such employee shall work for more than four hours before he/she has had an interval of rest for at least one hour.

(2) No young person shall be required or permitted to work continuously for more than three hours before he/she has had an interval of rest for at least one hour;

Spread over

11 The period of work of an employee in an establishment shall be so fixed by the employer that, inclusive of interval for rest, the period of work shall not spread over more than ten hours in any day.

Opening and Closing hour

12 (1) The State Government may, by notification, fix the time at which any establishment or class of establishment shall be opened or closed in any local area.

(2) No establishment shall, on any day, be opened earlier than and closed later than such hours as may be fixed by a notification issued in that behalf by the State Government under sub-section (1)

Provided that any customer who is being served or is waiting to be served in any establishment at the hour fixed for its closing may be served during the quarter of an hour immediately following such hours.

CHAPTER - IV  
HOLIDAY

Weekly holiday

13 (1) Every establishment shall remain closed on, and every employee of such establishment shall be allowed as holiday for rest on, one day of a week.

(2) The State Government may, by notification require that in addition to one day as referred to in sub-section (1) every establishment or class of establishment as may be specified, shall be closed between such hours in the after-noon on such days in each week.

(3) The day on which a shop shall be closed in each week under sub-section (1) shall be specified by the employer at the beginning of the year and shall be intimated to the Registering Officer and displayed in a notice board in a conspicuous place in the establishment.

Provided that no employer shall, more often than once in a period of three months, alter the day so specified, and shall intimate the alteration to the Registering Officer and make necessary changes in the notice board referred in this sub-section.

- (4) No deduction shall be made from the wages of any employee in such establishment on account of the closure of a shop under sub-section (1) or sub-section (2).

## Other holidays

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Every employee in an establishment shall be entitled to the following holidays with wages in a year, namely:-

- (a) three national holidays on 26<sup>th</sup> day of January (Republic Day), 15<sup>th</sup> day of August (Independence Day) and 2<sup>nd</sup> day of October (Gandhi Jayanti); and
- (b) five festival holidays on such days as the Government of Mizoram may, by notification specify from time to time.

Provided that an employee in any residential hotel, restaurant, eating house, theatre or any place of public amusement or entertainment may be required to work in such establishment on any such holiday, subject to the condition that in lieu thereof, a compensatory holiday with wages shall be allowed to such employee within thirty days from the date of such holiday:

Provided further that where any such employee in any establishment is required to work on any such compensatory holiday, he shall be paid additional wages equal to the ordinary rate of wages in lieu of such holiday

#### CHAPTER - V LEAVE

## Leave with wages

15 (1)

Every employee in an establishment shall be entitled to :-

- (a) privilege leave with wages for a period of fifteen days after every twelve months' continuous service in that establishment provided that such privilege leave may be accumulated upto a maximum period of thirty days.
- (b) casual leave with wages for a period of eight days in a calendar year on any reasonable ground.
- (c) sick leave with wages for a period of twelve days after every twelve months' continuous service in that establishment on the certification of a Medical Officer.

- (2) An employee of an establishment may apply for the grant of the privilege leave he is entitled under sub-section (1) (a) of this section, in writing to the employer, not less than seven days before the date of availing of such leave with wages.

(3) If an employee entitled to any leave under sub-section (1) is discharged by his employer before he has been allowed the leave, or if having applied for had been refused the leave, quits his employment before he has been allowed the leave, the employer shall pay him the full amount of wages payable in respect of the period of leave to which such employee is entitled at the time of such discharge.

(4) An employee shall be deemed to have completed a period of twelve months' continuous service within the meaning of this section, notwithstanding interruption in service, during those twelve months caused by sickness, accident or authorized leave not exceeding ninety days in the aggregate for all the three, or by a lock-out or by a strike which is not an illegal strike or by intermittent period of involuntary unemployment not exceeding thirty days in the aggregate, and authorized leave shall be deemed not to include any weekly holiday allowed under this Act which occurs at the beginning or end of an interruption caused by such leave.

Wages during  
Leave period

16

For the leave allowed to him under section 15, an employee shall be paid wages at the rate equal to the daily average of his normal wages for the days he worked during the preceding month exclusive of any overtime earning.

Power to exempt

17

Where the Government is satisfied that leave under any rules or under the term of any award, agreement or contract of service applicable to employees in an establishment provide benefits which in its opinion is more favourable than those for which this Act makes provisions, it may, by written order, exempt the establishment from all or any of the provisions of leave under this Act, subject to such conditions as may be specified in the order.

CHAPTER - VI

PRESCRIBED AUTHORITY AND NOTICE OF DISMISSAL.

Appointment of  
prescribed authority and  
notice of dismissal

18

- (1) The Government may, by notification, appoint an officer of the Labour and Employment Department, not below the rank of a Labour Commissioner, to be the prescribed authority under this Act.
- (2) No employer shall remove or dismiss an employee who has put in continuous service for a period of not less than six months, except for reasonable cause and unless the employee has been given one month's prior notice in writing or has been paid one month's wages in lieu thereof;

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Provided that where misconduct of an employee is brought on record with proof in an inquiry held by the employer for the purpose, the employee shall not be entitled to one month's prior notice or one month's wage in lieu of such notice.

(3) An employee removed or dismissed under sub-section (2) shall have a right to appeal to the prescribed authority on the ground that there was no reasonable cause for removal or dismissal or that the employee has not been guilty of misconduct as held by the employer.

(4) Where an employee has been removed or dismissed without reasonable cause or without proof of misconduct, the employee shall, where the employer does not agree to reinstate him, be entitled to such compensation as the prescribed authority may determine:

Provided that such compensation shall not exceed an amount calculated at one month's wage for every completed year of service subject, in any case, to the maximum of six months' wage.

(5) Any person aggrieved by an order of the prescribed authority may appeal to the District and session Judges having jurisdiction over the area in which the employee is employed in an establishment for a revision of such order and subject to the result of such revision, the decision of the prescribed authority shall be final and binding on both the employer and the employee.

(6) The amount payable as compensation under this section shall be in addition to any fine payable under this Act and shall be deposited with the Prescribed Authority within one month from the order of the Prescribed Authority or the District Judge as the case may be.

(7) No employee who has been awarded compensation under this section shall be entitled to bring a civil suit in respect of the same claim.

(8) Nothing contained in sub-section (2) or sub-section (4) shall affect the provisions of any other law or terms of an award agreement or contract of service, under which an employee is entitled to a longer period of notice or to more favourable benefits.

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the State Government may, by notification direct that, subject to the provisions of section (2) of the said Act, the said Act or any of the provisions thereof or of the rules made thereunder shall apply to all or any class of employees and their employers in the establishments to which this Act applies.

- (2) On the application of the provisions of the said Act to any establishment under section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of the provisions of the said Act within the local limits of his jurisdiction.

#### CHAPTER - VII EMPLOYMENT OF CHILDREN AND YOUNG PERSON.

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|---|----|-----|---|
| Prohibition of<br>Employment of<br>children | 20 | (1) | No child shall be employed in any establishment except as provided in the Child Labour (Prohibition and Regulation) Act, 1986.                  |
|   |    | (2) | No young person shall be required or allowed to work whether as an employee or otherwise in an establishment before 6:00 A.M or after 7:00 P.M. |

#### CHAPTER - VIII ENFORCEMENT AND INSPECTION.

- |                             |    |     |   |
|-----------------------------|----|-----|---|
| Appointment<br>of Inspector | 21 | (1) | The State Government may, by notification in the Official Gazette, appoint such officers or class of persons as it think fit to be Inspectors for the purpose of this Act within such local limits as may be assigned respectively. |
|                             |    | (2) | They State Government may, by notification in the Official Gazette, appoint an officer of Labour & Employment Department, not below the rank of Deputy Labour Commissioner as Chief Inspector for the purpose of this Act.          |
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- |                                     |    |     |   |
|-------------------------------------|----|-----|---|
| Power and<br>Duties of<br>Inspector | 22 |     | Subject to rules made under this Act, an Inspector appointed under section 21 may, within the local limits for which he is appointed:-  |
|                                     |    | (1) | enter at all reasonable times, and with such assistant if any, being persons in the service of the Government or any local authorities as he thinks fit, any place which is or which he has reasons to believe is an establishment. |

Inspector to be  
Public servant

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- (2) make such inspection of the premises and of any prescribed registers or records and take on the spot or otherwise evidence of any person employed in such premises for carrying out the purposes of this Act, provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.
- (3) every employer shall on demand produce for inspection to an Inspector all registers, records and notice required to be kept under and for the purposes of this Act.

Every inspector appointed under sub-section (1) and sub-section (2) of section 21 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Act XLY of 1860)

**CHAPTER - IX**  
**OFFENCES AND PENALTIES.**

Offences and

24

- Any employer who fails to comply with the Penalties, provisions shall, on conviction, be punishable.
- (1) in the case of the first conviction, with fine which shall not be less than two hundred rupees but may extend to five-hundred rupees, and
- (2) in the case of any subsequent conviction, with fine which shall not be less than one thousand but which may extend to two thousand rupees or with imprisonment for a period not less than two months, or with both.

Cognizance of  
offence

25

- No court shall take cognizance of any offence punishable under this Act or any rule or order made thereunder unless the complaints is made:-
- (1) by the employee of an establishment either by himself or through the Union of which he is a member, within three months from the date on which the offence is alleged to have been committed; or
- (2) by the Inspector appointed under this Act within six months from the date on which the alleged offences comes to his knowledge.
- (3) No court inferior to that of a Judicial Magistrate of the First Class shall try an offence punishable under this Act.

Protection of  
action taken  
under the Act

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No suit, prosecution or other legal proceedings shall lie against any persons for anything done or intended to be done in good faith under this Act.

CHAPTER - X  
MISCELLANEOUS

Records &  
Registers

- 27 (1) Every employer of an establishment shall maintain such records and registers as may be prescribed.
- (2) All such records and registers shall be kept on the premises of the establishment to which they relate.

Power to  
make rules.

- 28 (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - (a) health, safety, welfare of employees holiday for occasions;
  - (b) the from and date for application of registration and fees payable for such registration;
  - (c) The particulars with respect to certificate of registration.
  - (d) Any other matter which has been prescribed or has to be prescribed under this Act.
  - (e) Maintenance of records, registers and display of notices.
- (3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the Mizoram Legislative Assembly while it is in session for a total period of seven days which may be comprised in one session or in two successive sessions and if before the expiry of that session in which it is so laid or the session immediately following, the Mizoram Legislative Assembly agree in making any modification in the rules or the Mizoram Legislative Assembly agree that no rules should be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of State  
Government to  
prescribe precaution  
and standard

29

The State Government may, by special order, prescribed certain precautions and standard in respect of rooms, furniture and equipment for any class of employees in the premises of an establishment as it may deem necessary for securing health and safety of persons employed in such establishments.

Power to remove  
difficulties.

30

(1)

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of two years from the date on which this Act comes into existence.

(2)

Every order made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly.

Sd/-

Commissioner/Secretary  
Law & Judicial Department,  
Government of Mizoram.